

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

RICHARD MONTGOMERY,)	CASE NO. 4:15-cv-1953
)	
PLAINTIFF,)	JUDGE SARA LIOI
)	
vs.)	
)	OPINION AND ORDER
)	
)	
U.S. DEPARTMENT OF)	
AGRICULTURE, FARM SERVICE)	
AGENCY, et al.,)	
)	
DEFENDANTS.)	

This case was removed from the Trumbull County Court of Common Pleas by defendant U.S. Department of Agriculture, Farm Service Agency (“Department”) pursuant to 28 U.S.C. §§ 1441 and 1442(a)(1). (Doc. No. 1.) Thereafter, the Department moved to dismiss for lack of subject matter jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1) because plaintiff has not exhausted his administrative remedies with respect to his negligence claim as required by the Federal Tort Claims Act, 28 U.S.C. §§ 2671-2680, and has not brought his contract claim in the Court of Federal Claims, 28 U.S.C. § 1491. (Doc. No. 2 [“Mot.”].) Plaintiff concurs with the Department’s bases for dismissal due to lack of subject matter jurisdiction, and has filed his own motion to dismiss the Department from this case. (Doc. No. 8.).

Finding that the Court lacks subject matter jurisdiction over the Department, the U.S. Department of Agriculture, Farm Service Agency, is dismissed from this action.

Also pending before the Court is plaintiff's motion to remand this case to the Trumbull County Court of Common Pleas on the grounds there is no basis for federal jurisdiction over this action if the Department is no longer a party. (Doc. No. 9.) Plaintiff's motion to remand was filed within thirty (30) days from removal. The only remaining defendant, Huntington National Bank ("Huntington"), supports plaintiff's motion to remand, noting that there is no federal question in this common law breach of contract case upon which to base federal jurisdiction. (Doc. No. 11.).

"If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded." 28 U.S.C. § 1447(c). In the absence of the federal defendant, there is no basis for the Court's jurisdiction on the face of the complaint, and defendant Huntington has argued none.

Accordingly, plaintiff's motion to remand is granted. This case shall be remanded to the Trumbull County Court of Common Pleas.

IT IS SO ORDERED.

Dated: October 29, 2015



HONORABLE SARA LIOI
UNITED STATES DISTRICT JUDGE